

The federalization of local law enforcement

Though a rapid transition to a federalized police force is unlikely here in America, an incremental shift to greater federal control is already occurring

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The United States has more than 18,000 police departments — far more than any other nation. Each of the 50 states has its own Peace Officer Standards and Training board and officer / deputy certification criteria for more than 700,000 officers nationwide. Over the next several decades it's likely that a more federalized policing model will replace this decentralized approach.

Critics have argued for years that decentralized police administration fosters inherently poor-quality policing, tolerates racial bias, and makes it especially difficult to monitor and verify training and certification requirements across states. For many critics, federal intervention remains the remedy of choice. The current administration in Washington appears to agree.

All Law Enforcement is Local Will Be Federal

In his now-famous July 2009 press conference, President Obama responded to a question about the arrest of Harvard Professor Henry Gates by stating his belief that the “Cambridge police acted stupidly.” He went on to note our nation’s “long history” of disproportionate police stops and arrests of blacks and Latinos, “often times for no cause.”

He then made a comment that drew less attention. He said that we — where the meaning of ‘we’ is federal officials — should work with “local law enforcement to improve policing techniques to eliminate bias.”

Remarks from Attorney General Eric Holder regarding Arizona’s new immigration control law reflect the Administration’s belief that local law enforcement officers routinely violate federal civil rights standards with little regard for ethics or the Constitution.

As American as Apple Pie

These attitudes are tethered to subtle pressure to federalize police governance. The courts, federal grant dollars, and impending nationwide unionization will contribute to the erosion of local control of police authority.

The prevailing tool in the federal effort to rein in local police remains litigation, a process that some would argue is as “American as apple pie.” The courts serve as a Constitutional filter that directly influences police tactics, techniques, and procedures.

Nothing screams national standardization more than the use of force and how that affects individual liberties.¹ Any one of the more than 600 law enforcement training academies would be negligent if faculty did not cover Tennessee v. Garner, Graham v. Connor, Saucier v. Katz, and Brosseau v. Haugen.

However, other forms of federal litigation have also emerged. In 1994, Congress granted the Department of Justice's Civil Rights Division the authority to bring civil lawsuits against police agencies that have demonstrated a "pattern or practice" that results in illegal or unconstitutional behavior. Both Democratic and Republican administrations have used this mechanism to force compliance with federal authority and Constitutional mandates.

Departments in Pittsburgh, Los Angeles, Cincinnati, Detroit, and Buffalo — to name a few — have all either entered into consent decrees or signed a memorandum of agreement to avoid litigation. These decrees have stipulated federal monitoring for varying periods (typically two to five years) that give the department time to comply.

The long-term success of these reforms remains unknown. However, a 2005 study by the Vera Institute of Justice (completed in cooperation with the Department of Justice's Institute of Community Oriented Policing) found that, at least in the case of Pittsburgh, federal intervention forged healthy change inside the department.

The Power of the Purse

The second mechanism of federal intervention is through the use of federal grant money, which in turn demands that receiving departments comply with federal standards of implementation and accountability.

During his campaign for the White House, then-Candidate Obama pledged, as part of his urban renewal efforts, to increase funding for local law enforcement agencies through the DoJ's Community Oriented Policing (COPS) grant program. The purpose of the infusion of taxpayer dollars was to "combat crime" and "address police brutality and accountability."

Unfortunately, at least for crime reduction, an October 2005 General Accounting Office (GAO) study cast doubt on the effectiveness of the COPS program. Reviewing data between 1994 and 2001, the GAO concluded that COPS funding added about 17,000 to the sworn officer pool available to local agencies. Though the ability of the program to reduce crime varied among jurisdictions, the overall conclusion was that any reduction in crime was "modest" and that "factors other than COPS funds accounted for the majority of the decline in crime during this period."

These conclusions suggest that federal dollars for local policing have more to do with control via "accountability" than crime reduction. The new Administration included one billion dollars in the stimulus package to hire 7,000 new officers in 2009 and 2010. In April 2009, the House pledged an additional \$1.8 billion over the next five years to provide 50,000 federally paid local officers. In June 2010, the President warned federal lawmakers that without further stimulus funds, police layoffs would be inevitable. In other words, over time the federal government will be paying the cost of tens of thousands of police officers nationwide. These numbers reflect a growing dependency on federal dollars for local law enforcement needs, something that then Senator Biden wanted to make permanent.

National Unionization

House Resolution 413 — the oddly-named Public Safety Employer-Employee Cooperation Act — has a stated purpose of extending collective bargaining rights to all first responders. Doug Stafford from the National Right to Work Committee believes this legislation has greater implications and grants the federal government "broad power to impose the terms and conditions of employment for ... public safety workers and local and state governments."

Should this legislation become law, it's unlikely that a newly-established national union would allow localities to lay off police officers. The result would be that localities would either have to raise taxes after federal funding ran out or ask for additional federal funding, creating a permanent dependency that will foster federal control over local policing practices.

Though a rapid transition to a federalized police force is unlikely here in America, an incremental shift to greater federal control is already occurring. These efforts will be difficult to forestall as Washington plays an increasingly intrusive role in local law enforcement.

¹See Chris McNab, *Deadly Force* (Osprey Press, MD: 2009)

About the author

Retiring after nearly 22 years of active duty in the Army, Lance Eldridge worked as the director of a law enforcement training academy and served as a rural patrol deputy and patrol officer in Colorado. While in the military, he held leadership positions in a variety of organizations and has written extensively about US military strategy, operations, and history. He is a graduate of the US Army's Command and General Staff College and the Norwegian Staff College. He holds a Masters Degree in History and a Masters Degree in Strategic Intelligence. He has taught graduate and undergraduate courses in national security strategy, European regional security, US history, and terrorism. He now works in northern Virginia.